MEDICAL EXAMINERS FOR NEW YORK STATE*

REPORT BY THE

COMMITTEE ON PUBLIC HEALTH**

THE NEW YORK ACADEMY OF MEDICINE

Dr. Alfred A. Angrist, Chairman of the Subcommittee on Medical Examiner Systems and Autopsy Law, the New York State Association of Approved Laboratories, submitted on behalf of the Association two problems for consideration by the Committee on Public Health:

1. The authority of the coroner and the medical examiner to perform an autopsy without consent of next of kin during the course of his duties.
2. Establishment of a medical examiner system throughout New York State to replace the present county coroner system.

Concern about these problems was precipitated by a legal action brought by one Dorothy Brown to recover damages on the claim that one of the coroners of Broome County performed an unauthorized and illegal autopsy on the body of her deceased husband. The case was tried in the County Court before a county judge and a jury on March 9 and 10, 1959; the jury returned a verdict in favor of the plaintiff for the sum of $3,500.00. Following the verdict the attorney for the defendant moved to set it aside on the grounds that it was against the weight of evidence, contrary to law, and was excessive.

The following account of the case is taken from Presiding Judge Brink's written decision:

> "This cause of action arose out of an incident which happened on the 10th day of February, 1958 when one Francis Brown, the deceased husband of the Plaintiff Dorothy Brown, was found dead in the Delaware and Hudson Railroad yards in the City of Binghamton, New York with his left hand partially severed. The deceased had been employed as a trainman by the Delaware and Hudson Railroad and had reported for work shortly before midnight. The train on which he was to work was being assembled in the yard and was scheduled to leave some time later in the early hours of the morning. The decedent's body was found between two tracks in the railroad yards some time between 2:30 A.M. and 3:00 A.M. Dr. Vincent Maddi, one of the coroners of Broome County, was summoned and when he arrived the body had already been removed to the yard office. The widow was notified of the accident by the police,

* Report prepared by a Subcommittee comprised of: Robert W. Laidlaw, M.D., Chairman; Alfred E. Fischer, M.D.; Maximin DeM. Touart, M.D.; Peter Vogel, M.D., and H. D. Kruse, M.D., Secretary.

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and when she learned that the coroner had directed an autopsy on the body, she protested to the police stating that she did not want an autopsy performed. The coroner testified on the examination before trial, that he did not recall whether before the autopsy he was advised as to the widow's attitude, but that it would not have made any difference.

"The autopsy findings showed: early acute myocardial infarction of left ventricle of the heart; together with, coronary atherosclerosis; old myocardial infarction of left ventricle; extensive trauma to left hand, with loss of soft tissue and bones; and ecchymosis over left side of chest. The coroner filed a decision stating that death was due to natural causes.

"The record shows, that there was no written request for an autopsy from duly constituted police authorities and further that no formal inquest was held involving the swearing and examining of witnesses. The principal issue of law involved in this case is the question whether under the circumstances the autopsy which the coroner caused to be performed upon the body of the deceased was authorized and lawful under the statutes of the State of New York authorizing and permitting dissection of a body of a deceased person.

"Under the Common Law, the body of a deceased person belongs to the nearest next of kin and no one had a right to mutilate or dissect a body without their permission. However, for the protection of society, it became necessary to authorize medical examiners to dissect bodies to determine the cause of death, particularly, in cases involving suspected crime and suicide. In most of the counties of this State, coroners are elected to act as medical examiners to investigate the cause of sudden deaths pursuant to authority vested in them by statute."

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"It should be observed in the first place that Section 662 of the County Law charges the coroner with the duty of making inquiry into unnatural deaths. Section 773 of the Code of Criminal Procedure sets forth the conditions under which a coroner is authorized by law to hold an inquest upon a body. A close examination of this last Section is of considerable interest and, particularly, the phrase, 'under such circumstances, as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means or has committed suicide.' . . . Black's Law Dictionary defines the word 'suspect' as follows: 'to have a slight or even vague idea concerning; not necessarily involving knowledge or belief or likelihood.' In other words, a coroner is authorized to hold an inquest, if there is even a slight possibility that the death of the decedent resulted from either crime or suicide.

"Section 4210 of the Public Health Law, Subdivision #2 authorizes a coroner to dissect a body whenever a coroner is authorized by law to hold an inquest upon a body. It should be noted that this statute does not provide, whenever a coroner holds an inquest upon a body, but rather 'when a coroner is authorized to hold an inquest upon a body.' The Attorney for the plaintiff

argues that a coroner does not have the right to dissect a body under this provision of the statute unless he actually holds a formal inquest. To this Court, it seems such an argument is unsound. It would seem ridiculous that a coroner should be required to swear witnesses and take proof before he first ascertained that the decedent died from unnatural causes and the cause of the traumatic death. To act otherwise, would cause unnecessary inconvenience and waste of time, not only for the coroner, but also for the witnesses who would necessarily be subpoenaed. A more reasonable interpretation of the intention of the statutes would be to say, that under any circumstances where a coroner suspects that a crime or a suicide is involved, he has the right to perform an autopsy as a preliminary part of an inquest, so that he may determine whether further investigation is necessary.

"In order not to interfere with burial plans and also for scientific reasons, post mortem examinations of bodies should be conducted promptly after death. They should not be delayed pending other types of investigations.

"With this construction of the statute, the only remaining question is whether under the facts and circumstances present in this case, the coroner was justified in suspecting that a crime might have been committed, or the decedent may have died as a result of suicide. The Plaintiff's husband was found dead under unusual circumstances. He was lying between two railroad tracks with a portion of his hand severed. Before the coroner arrived, the body had been moved. No one saw the decedent die or knew how he died.

"Under all the circumstances of this case, it is the opinion of this Court, that as a matter of law, the coroner was justified in suspecting violence. To hold otherwise, in the opinion of this Court, would be dogmatic and arbitrary interference with the functions of a medical examiner. Unfortunately, the dissection of a human body often adds to the sorrow and anxiety of the next of kin. However, in our modern society with the ever increasing numbers of traumatic deaths, it seems most important that our Courts should give the statutes involved a broad and liberal construction."

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In a deposition admitted as testimony during the trial the coroner stated that the partly amputated hand on the decedent raised the question whether it or something else was the cause of death. Furthermore, loss of part of the hand could have been criminal or accidental. For these reasons he ordered an autopsy. On direct examination he testified that an autopsy would not disclose whether death was homicidal, suicidal, natural, or accidental. It would give information on the cause of death. He reiterated his opinion which he had filed on his report that death was from a heart attack resulting from coronary occlusion and acute myocardial infarction. In his judgment the injury to the hand occurred after death.

On cross-examination it was brought out that the autopsy report by the pathologist stated that death could have ensued in the absence of immediate medical attention as the result of hemorrhage. Disagreeing with the pathologist's opinion, the

coroner reaffirmed his position that death was due to natural causes, not trauma or accident.

The presiding judge of the County Court set aside the jury verdict, granted defendant's motion for nonsuit and dismissed the plaintiff's complaint. The plaintiff then carried an appeal to the Appellate Division, Third Department, Supreme Court, State of New York. There the presiding county judge's decision was reversed.

The opinion for reversal by the Appellate Division, written by Presiding Justice Bergan, follows in part:

> "The statutory test of the right of a coroner to order an autopsy under circumstances such as those in this case is whether he 'has reasonable ground to suspect' that the death was occasioned 'by the act of another by criminal means' or that decedent is a suicide (Code of Criminal Procedure, § 773, read with Public Health Law, § 4210).
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> "Whether in the case of a railroad or other industrial worker found dead near dangerous machinery or devices which could, and often do, accidentally cause death, a coroner would have 'reasonable ground to suspect' a crime would depend on the circumstances and the reasonableness of such ground would usually be a fact question for the jury.
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> "On the trial of this case the judge treated the problem as a question of fact and carefully submitted it for the jury's verdict. On the motion to set aside the verdict the judge held as a matter of law that the coroner was 'justified in suspecting violence'; and ruled that a coroner has the right to direct an autopsy where he 'suspects that a crime is involved.'
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> "The statute does not rest a discretion to direct autopsy in the mere mental 'suspicion' of the coroner. He must, says the statute, have 'reasonable ground' to suspect a crime. The rational basis of suspicion that a crime has been committed is the test; and not merely 'violence' which often is a concomitant part of an accident. On this record the question is one of fact and not of law and the complaint should not have been dismissed.
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> "The defendant moved to set aside the verdict as against the weight of evidence and as excessive. The court did not pass on these motions because the judge granted the motion to dismiss as a matter of law.
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> "We should determine these motions thus left open rather than remit the action to the County Court for their determination (Civ. Prac. Act, §§ 584, 626; *Mysliwiec v. W. Lowenthal Co., Inc.*, 280 App. Div. 1001; *Guido v. Delaware, Lackawanna & Western R.R. Co.*, 5 A. D. 754).
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> "The verdict is not against the weight of evidence; nor does it seem in our judgment so far excessive as to require a new trial on this ground."

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> "The judgment should be reversed on the law and the facts and judgment entered for plaintiff in accordance with the verdict with costs to appellant."

Upon receiving this reversal, the original defendant, Broome County, took the

case to the Court of Appeals of New York State. There the Appellate Division's decision was sustained.

Here in part is the Court of Appeals' opinion, written by Justice Burke:

"The trial court set aside a verdict of a jury and dismissed the complaint as a matter of law in this action brought against the County for an alleged unauthorized autopsy performed at the direction of a coroner, over the objections of the plaintiff, on the body of her husband. . . . The Appellate Division has reversed the judgment on the law and the facts, and directed judgment for the plaintiff, finding that under the circumstances of this case the statutory standard of § 773 of the Code of Criminal Procedure (i.e. reasonableness of the coroner's conduct) was a fact question for the jury.

"The appellant's principal argument that the reasonableness of the conduct herein is simply a question of law misconstrues the meaning of the statutes. Although the statutes governing the performance of autopsies grant broad discretion to coroners, the power is limited to deaths which indicate a possibility of criminality or suicide. The exercise of such discretion will generally be upheld because it is apparent that a court, in most cases, can readily determine whether the coroner had 'reasonable ground to suspect' that the death was occasioned 'by the act of another by criminal means' or that decedent is a suicide. (Code of Criminal Procedure § 773, read with Public Health Law § 4210.) Occasionally a court may find that the evidence shows an abuse of discretion as a matter of law but such instances are rare. There are, however, many cases, and this is one, where the question of the reasonableness of the grounds for directing an autopsy may not be found to be absolutely right or wrong. It falls in an area where there is a want of full proof. Then the question of reasonableness cannot be treated as a problem of law alone. When, as here, the nature of the work, the duties of the deceased, the site of the work and the scene of death disclose conditions which often accompany accidents resulting in death, there should be substantial reasons present to justify the need for an autopsy. Since the death was unwitnessed and could have been caused by the injury to the hand, an autopsy would not lead to signs of criminality or point to a suicide. When these facts are considered collectively, the judgment used by the coroner cannot be found to be unassailable. In such circumstances an appraisal of the sensibleness of a decision directing an autopsy does involve a finding of fact."

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"The judgment of the Appellate Division should be affirmed. . . ."

In reviewing the case it should be noted that two actions may have affected the course of legal events:

The first has to do with the coroner's decision in his written report in the performance of his duties. From the circumstances surrounding the death of Francis Brown and the findings upon autopsy two causes of death were to be considered: 1) a coronary attack; 2) hemorrhage from a partially amputated hand. Further to

be decided was whether the circumstances were homicidal, suicidal, natural, or accidental. It was the coroner's opinion that a natural death from a coronary attack had occurred and that partial loss of the hand had been a subsequent occurrence. This opinion differed from that of the pathologist. In such circumstances some medical examiners would take the view that it would be difficult if not impossible to be so categorical. Whether with a different report from the coroner the plaintiff would have taken legal action can only be surmised. This point is not an issue in the judicial review, and is broached only to emphasize the sometimes difficult problems that confront the coroner or medical examiner and require the highest professional skill in forensic medicine.

Secondly, the counsel for the defense moved to set aside the original verdict as against the weight of evidence and as excessive. The presiding judge granted the motion to dismiss as a matter of law without passing on the grounds advanced for the motion. In retrospect it is tempting to speculate on the outcome of the case if counsel had moved to dismiss on the grounds of the law. To be sure, it is not certain that even then the Appellate Division would have upheld the presiding judge. For, in the written opinion of the latter body, it passed on the two motions having to do with weight of evidence and excessive award and reversed the judgment on both facts and the law.

There is always the possibility that a legal case may be lost on technicalities that bear no relation to the merits. In this case it should be borne in mind that the adverse ruling handed down by the Court of Appeals may become a precedent. Dr. Angrist has pointed out the possibility of catastrophic consequences from such an outcome: the effect on medico-legal investigations of deaths in the State will be extremely serious. He further adds that requiring consent introduces the existing ambiguity in the law in which it is not certain whether permission from all of equal rank among next of kin is required.

Since the higher courts handed down an adverse ruling, the presentiment about medico-legal investigations in the State makes a new law imperative in order to avoid chaos. For, in the light of the precedent established by the decision of the Court of Appeals, the existing law does not seem to confer adequate, unmistakable, and assured authority to order an autopsy without jeopardy of litigation.

The difficulty is in the wording of the existing law. The troublesome and disputatious words in the law are "reasonable ground to suspect a crime". The Appellate Division made this phrase the critical issue so far as interpretation of the law was concerned. It is manifest that such phraseology raises a debatable issue and almost invites litigation. Equally disturbing is the interpretation put on the law by the Appellate Division. In his brief submitted to the Appellate Division, the County Attorney advanced the following argument under "Point I. The autopsy was legally ordered":

> "Facts and circumstances for this case is [sic] set forth in the record to show that the deceased was found under circumstances that a coroner would be justified in holding an inquest. The deceased was found lying between the railroad tracks with his left hand partially severed and had been removed from

> the tracks to a shed in the Delaware and Hudson Railroad yards in the City of Binghamton, New York, before coroner arrived. No one saw decedent die or knew how he died. These circumstances appear to be sufficient to justify a coroner to suspect violence."

But the Appellate Division and the Court of Appeals did not concur with the County Attorney in this view.

It would appear that the situation would be much improved by a new and clearer law. At present it almost seems as if the legality of ordering an autopsy depends on what it reveals. When an autopsy, especially one ordered on slight suspicion, turns up valuable and critical evidence, it is tacitly accepted as justifiable, indeed essential. On the other hand, when it adds little material evidence, it is open to the charge of being unnecessary. The fact is that after an autopsy has been completed, it is always immeasurably easier to decide whether it has been absolutely necessary. But the coroner or medical examiner must make his decision without the benefit of after-knowledge. What should not be forgotten is that the long history of forensic medicine has contained instances in which the autopsy, ordered on very slight suspicion, has revealed unexpected and unsurmised facts. Furthermore, it should be emphatically noted that on occasion bodies have had to be exhumed for autopsy, a development which illustrates how elusive suspicion may be. In view of these considerations and of the purpose of the autopsy to serve the ends of justice, it would seem wise in case of doubt or uncertainty to proceed on the assumption that an autopsy may provide material evidence. Indeed, it is most often needed under such circumstances. The conclusion is therefore inescapable that the coroner or medical examiner, who functions impartially as an independent officer, should be clearly directed and empowered to pursue his duties without the threat of possible litigation. Yet it is not just that the immunity of the coroner is in question that points to the need for revision of the existing statutes; justice dictates such a step.

To be more specific, one proposed remedy to the situation would seem to be a legislative amendment that would require the coroner to have an autopsy conducted in every sudden and unexplained death unless consideration of the surrounding circumstances and physical examination of the body renders such a course unnecessary. In view of the number of times that a seemingly accidental death has been later demonstrated to have been criminal, this proposed amendment does not seem unreasonable. It should be borne in mind that the medical examiner's function is to determine the cause of death, which in one instance may bring out unsuspected criminality and in another case may show what had at first glance appeared to be criminal violence was actually accidental trauma. On account of the purpose of the autopsy and its valuable function as a source of evidence, the Committee believes that when a death occurs in a suspicious, questionable, unusual, or uncertain manner, the ordering of an autopsy by the coroner or medical examiner should be mandatory, except that waiver of it by that official should be discretionary.

On the second question raised by Dr. Angrist, namely, establishment of a medical examiner system throughout New York State to replace the present county coroner system, the Committee on Public Health can draw upon its long experience.

The shortcomings of the coroner system are not a new subject nor are they strange to the Committee. It is a national problem fully documented in an extensive bibliography. By request the Committee participated in the deliberations that attended the replacement of the coroner system by the Medical Examiner's Office in New York City in 1915. Thus, it is familiar with the duties and professional requirements associated with the investigation of sudden and unexplained deaths. It has presented its views on the specifications for medical examiner. Despite the advance registered by the conversion to the medical examiner system in a few counties, the Committee has striven for even greater progress. For one thing, as the result of its deliberations it realized many years ago that forensic medicine was a highly significant and key subject in the investigation of unexplained deaths, that the subject was accorded inadequate recognition in the medical curriculum, and that an insufficient number of physicians were trained in it. Since 1927 the Committee has at every promising opportunity drawn attention to these inadequacies, and has by reports and action attempted to overcome them by encouraging establishment of courses in forensic medicine.

Through the years the concept of the duties of the coroner's office has undergone transformation. Once the coroner was mainly a special magistrate with responsibility for investigation and gathering of evidence on sudden and unexplained deaths. It was and still is an elective office held as often as not by a layman. Since the major duty of the office was to ascertain the cause of death and the attending circumstances, it became apparent that a physician was best fitted for this responsibility. Then the growth of pathology as a specialty and the increasing recognition of the importance of the autopsy in providing evidence brought prominence to that part of the investigative procedure. Where the coroner system still prevails, a pathologist, if available, is apt to be requested to conduct any necessary autopsy. On the other hand, it should be pointed out that the pathologist, in conducting the postmortem examination, performs only one, not all, of the functions that are an essential part of the investigation of sudden and unexplained deaths. In the medical examiner system it is usually specified that the official be both a physician and a pathologist. But these specifications still fall short of enumerating an essential part of his training for effective performance of his duties: criminal investigation and forensic medicine. It is not enough that the medical examiner be a physician and a pathologist. He must have training in consideration of all the circumstances surrounding sudden or unexplained death. In short, the duties of the official with this responsibility require that he be a combination of physician, pathologist, and criminal investigator.

In view of the fairly substantial number of sudden and unexplained deaths in modern society, and the need for highly specialized knowledge and skill in investigation of them, the Committee on Public Health recommends that the medical examiner system replace that of the county coroner system throughout New York State. In the opinion of the Committee any plan to replace the coroner by the medical examiner should specify the special training the latter should have. In addition to his degree in medicine he should have graduate training in pathology,

and courses in criminal investigation and forensic medicine.

In making this recommendation the Committee has been realistic in recognizing the difficulties in achieving it. It is cognizant of things as they are while pointing out how they should be. It is aware of the shortage of medical examiners with such qualifications. It realizes that if the medical examiner system was instituted throughout the state, probably few counties could immediately fill the office with trained men. The Committee believes that this situation could be overcome by proper encouragement of hospital pathologists, who hold a medical degree, to take necessary courses and training in forensic medicine that would qualify them as medical examiners. A standard manual of procedure, such as has been promulgated for the Chief Medical Examiner of the City of New York, will also be helpful in the investigation of unexplained deaths in the counties.

To replace the coroner system by a medical examiner system in New York State would require enactment of new legislation or utilization of a provision in the present law. In 1951 the state legislature passed a law amending the coroner system with the effect that the office might be abolished and a medical examiner system created by referendum.

Summary of Recommendations

The Committee on Public Health recommends that:

1. Necessary action be initiated to replace the county coroner system by the medical examiner system throughout New York State.

2. An amendment to the existing law should be sought which would be designed to clarify the existing provision granting the coroner a right to order an autopsy in the investigation of unexplained deaths.